IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1800 of 2005
&
LETTERS PATENT APPEAL No. 1801 of 2005
In
SPECIAL CIVIL APPLICATION Nos. 4380 and 4388 of 2004

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

HONOURABLE MR.JUSTICE A.S.DAVE

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KATHLAL TALUKA FAIR PRICE SHOPAND KEROSENE LICENCE HOLDER
Versus
STATE OF GUJARAT & others

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Appearance :

Mr. R.M. Chhaya for the appellants

Ms. Manisha L. Shah, Assistant Government Pleader for the respondents

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CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE A.S.DAVE

Date : 02/03/2007

ORAL ORDER

1 These two Letters Patent Appeals arise out of the common order

dated 9th April 2004 passed by the learned Single Judge in Special Civil Application Nos.4380 of 2004 and 4388 of 2004 preferred by the Fair Price Shops and Kerosene Licence Holder Associations of Kathlal Taluka and Kapadwanj Taluka under Article 226 of the Constitution of India, by which, they challenged communication dated 16th March 1996 issued by the Commissioner, Mid-day Meal Scheme, with regard to recovery of price of empty gunny bags/ tins of food-grains, sugar and oil supplied by the Civil Supplies Department.

2 Short controversy involved in these appeals pertains to demand made by the Commissioner, Mid-day Meal Scheme, from the fair price shop owners to return empty gunny bags, oil-tins, etc or, in the alternative, to deposit the amounts with the State Government towards price of such containers of food articles supplied for mid-day meal scheme, since the price of gunny bags, oil-tins etc. has been paid by the respective Collectorate.

3 The learned Single Judge, after considering the submissions of the learned advocates appearing for the parties, negatived the contention of the petitioners on the ground that their case was not covered by the principle of promissory estoppel, since no promise was given by the Commissioner, Mid-day Meal Scheme, for not recovering price of empty

gunny bags and oil tins etc.

4 It is to be noted that, while admitting the present appeals, by order dated 28th December 2006, the Division Bench of this Court has passed the following interim order:

> "Leave to make corrections in the Civil Applications for Stay.
>
> Mr Chhaya, learned counsel for the appellants submits that since the Government Resolutions dated 29.3.1986 (Annexure "A") and 5.10.1984 (Annexure "C") while stipulating the rates of commission for the food articles, clearly provided that the appellants will be entitled to retain the empty bags and empty tins, the appellants could not have been instructed by the Commissioner of Mid-day Meals Scheme to return the empty bags and empty tins or to deposit the amounts with the State Government. It is submitted that in any view of the matter, without prejudice to their rights and contentions, the appellants are prepared to comply with the aforesaid instructions of the Commissioner prospectively from the date of the judgment of the learned Single Judge and, therefore, no recovery should be made for the prior period.
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> Notice returnable on 31st January, 2006.
>
> In the meantime, the respondents shall not make recovery of the amounts of empty bags/empty tins for the period prior to 1.4.2004."

5 Today, when these appeals are taken up for final disposal, the learned counsel for the appellants has restricted his argument to the extent that the members of the appellants-Associations are small fair price shop owners and they have not maintained any stock and accounts of empty bags and tins of food-grain, sugar, oil and the recovery with retrospective effect for these items by the Authority would cause undue

hardship and it will be impossible for them to pay the amount, as demanded. The learned counsel for the appellant has, further, submitted that, in case of fair-price shop owners, the Food & Civil Supplies Department, State of Gujarat, did not charge any separate amount for the empty bags and oil tins in view of the arrangement worked out between the Government and the fair-price shop owners. The learned counsel has, further, assured that, as recorded in the interim order by the Division Bench of this Court on 28th December 2005, all the members of the appellant-Association have complied with the instructions from the date of the order of the learned Single Judge. Therefore, recovery of the past dues may kindly be stayed.

6 Learned Assistant Government Pleader has drawn our attention to Government Resolutions of 29th March 1986 and 5th October 1994, which provided for special commissions to the fair price shop owners with regard to food grains and edible oils, and submitted that no analogy can be drawn from the above referred two resolutions, which are strictly applicable to the fair price shops. According to her, therefore, the learned Single Judge has rightly rejected the writ petitions while negating the contentions of the appellants.

7 We have heard learned advocates for the parties and perused the

record.

8 On perusal of the record, it is found that, so far as the Food and Civil Supplies Department, State of Gujarat, is concerned, a workable formula is evolved, by which, the fair-price shop owners are granted commissions on the basis of the nature and location of fair price shop. If it is in tribal area, different rates are fixed for commission. However, it is made clear that the amount will not be recovered for empty gunny bags and oil tins supplied to such fair price shops.

9 So far as the impugned decision of the Commissioner, Mid-day Meal Scheme, is concerned, we do not think it proper to recover with retrospective effect from the petty fair price shop owners after lapse of four to five years particularly when no stock account was maintained by such fair price shop owners of empty bags and oil tins.

10 Besides, the appellants have given an assurance to this Court that they have been paying the amount for the above containers from the date of the order of the learned Single Judge and continued to pay as such.

11 Considering the above facts and circumstances of the case and in

the interest of justice, we direct the Commissioner, Mid-day Meal Scheme, not to recover the amount of price of empty gunny bags/ tins of food-grains, sugar and oil etc. from the members of the appellants-Associations for the period preceding to the date of the order of the learned Single Judge, i.e. 9th April 2004.

12 Both the appeals are allowed to the extent indicated hereinabove.

(Y.R. MEENA, C.J.)

(ANANT S. DAVE, J.)

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